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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,166	12/14/2001	Richard L. Underhill	KCC 4758; KC #15,646A	5860
321	7590	05/14/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	5

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,166

Applicant(s)

UNDERHILL ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 6,10-18,24 and 28-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-9,19-23,25-27 and 50-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the Group I invention and the species of Figure 5 in Paper No. 3 is still acknowledged.
2. Claims 37-42 and 6, 10-18, 24, 28-36 and 43-49 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, respectively, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

In addition to claims 11-18, and 28-49, claims 6 and 24 are still also withdrawn. Applicant's remarks on pages 20-22 with regard to the withdrawal of claims 4-8 and 22-26 have been noted but the Examiner is unaware of any portion of Chapter 800 of the MPEP which requires the Examiner to procure the consent of Applicant to withdraw claims that the Examiner does not agree are readable upon the elected species. In any case, Applicants have now added a limitation with regard to a Flowback Test to each of the independent claims. As discussed further infra such Test is described only with regard to a specific absorbent, see page 25, lines 11-17, Sample 1, and therefore each of the independent claims is interpreted as requiring such specific absorbent structure. Therefore, claims 4-5, 7-8, 22-23 and 25-26 are considered to read on the elected species since the subject matter of claims 4-5, 7-8, 22-23 and 25-26 is already considered, at least in part, to be set forth in the independent claims they depend from, see the discussion infra. Likewise, claims 6 and 24 are still not considered to read on the claimed species since the Sample 1 discussed supra did not disclose the inclusion of such structure.

Specification

Drawings

3. The drawings were received on 2-23-04. These drawings are approved by the Examiner.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention, as best understood and interpreted, see discussion infra, i.e. including a central wetness indicating zone composed entirely of wood pulp fluff and absorbent zones composed of wood pulp fluff and superabsorbent material, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Positive antecedent basis for "a Flowback Test" as set forth in claims 1-5, 7-9, 19-23, 25-27 and 50-53 should be set forth. As set forth in Applicants remarks on page 22 and as best understood from the disclosure, Experiment 2 should be labeled as "Flowback Test".

Claim Objections

5. Claims 1-5, 7-9, 19-23, 25-27 and 50-53 are objected to because of the following informalities: In claim 1, lines 13-14, based on page 25, line 27-page 26, line 5 and Figure 6, "having a flowback...grams" should be --capable of maintaining at least about 20 grams of the liquid body waste available for flow back for about 1 minute according to a Flowback Test-- to be consistent and accurate. This objection also applies to similar language in claim 19. In claim 50, lines 2-4, "has a ...about 10 grams" should be --capable maintaining at least about 10 grams of liquid body waste available for flow back for at least about five minutes according to said Flowback Test--. This objection also applies to similar language in claim 52. In claim 51, lines 2-4, "has...grams" should be --capable of maintaining at least about 5 grams of liquid body waste available for flow back for at least about 10 minutes according to said Flowback Test--. This objection also applies to similar language in claim 53. In claims 52 and 53, line 4, "the" should be --a--. In claim 9, line 3, "the total" should be --a total--. Appropriate correction is required.

6. Applicant is advised that should claims 1, 19, 50 and 51 be found allowable, claims 2-3, 20-21 and 52-53 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

See page 25, line 6-page 26, line 9, Figures 5-6 and page 5, lines 4-9, i.e. as interpreted in light of the specification, the Flow Back Test claimed in claims 1 and 19 require the absorbent body of the Test to simulate the absorbent body 153, or in other words, include zones as set forth in claims 2-3 and 20-21, respectively. Claims 52-53 are claims 50-51 in independent form.

Claim Language Interpretation

7. "Liquid impermeable" and "liquid permeable" are defined as set forth on page 6, lines 15-21. Also, as already discussed supra, claims 1, 19, and 50-53 require the absorbent body to maintain a certain amount of liquid body waste available for flowback for a certain period of time according to the Flowback Test. As set forth in Applicant's remarks and as best understood from page 25, line 6-page 26, line 9, Figures 5-6, page 21, lines 20-21 and page 5, lines 4-9, such a test requires the use of samples which simulate a specific absorbent body which are tested in accordance with procedures set forth at page 20, lines 1-19. The specific absorbent body simulated by the samples is the absorbent body 153 of the second embodiment or, in other words, an absorbent body of 5 inch width having a central wetness indicating zone of two inch width composed entirely of wood pulp fluff and laterally adjacent absorbent zones each of 1½ inch width and composed of a mixture of wood pulp fluff and superabsorbent material with the concentration of superabsorbent material constituting about 40 percent by weight of the absorbent body is used. Therefore, since such a specific absorbent body is required for the test and the test is required by the claims, claims 1, 19 and 50-53 are also interpreted to require such a specific absorbent body.

Claim Rejections - 35 USC § 112

8. Claims 2-5, 7-9, 19-23 and 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 2, 4, 20 and 22, these claims require at a minimum less than that which the claims are interpreted to require, i.e. only one absorbent zone and a wetness indicating zone comprising hydrophilic fibers as compared to the structure interpreted in paragraph 7 supra. Therefore, it is unclear what structure at a minimum is being required by these claims. With regard to claims 3 and 21, dependent claims are required to further limit the structure they depend from. Claims 3 and 21 appear to only further claim structure already encompassed by the claim they depend from, see paragraph 7 supra. Therefore it is unclear what the further limiting structure is? In regard to claim 5, lines 1-4, claim 7, and thereby 8, claim 23, lines 1-4 and claim 25, and thereby 26, these claims are inconsistent with claims 1 and 19 which are interpreted to include a wetness indicating zone composed entirely of wood pulp fluff. In regard to claim 5, lines 4 et seq, claims 8-9, claim 23, lines 4 et seq and claims 26-27, these claims are also unclear because they either require at a minimum less than that which the claims are interpreted to include (i.e. require only absorbent zones in which the superabsorbent is present in an amount less than about 40 percent by weight of the absorbent body or a width of the wetness indicating zone of less than 40% of the total width, i.e. what structure at a minimum is required?) and are inconsistent (i.e. the concentration of the superabsorbent as claimed can also be more than about 40% and the width of the wetness indicating zone can also be more than 40%), see paragraph 7 supra.

Claim Rejections - 35 USC § 102/103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-5, 7-9, 19-23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg '023.

With regard to claims 1, 19 and 50-53, see, e.g., paragraph 7 supra, Berg at Figures 1-3, the first sentence of the abstract, col. 1, lines 13-21, col. 2, lines 47-53 and 61-64, col. 4, lines 43-52 and thereby '003 at col. 5, lines 42-48, col. 11, lines 9-11, col. 16, lines 23-29, 41-44 and 50-54, col. 17, lines 6-18, col. 20, lines 18-40, col. 19, lines 47-54, the paragraph bridging cols. 20-21, col. 22, lines 21-49 and 65 et seq, col. 23, lines 11-16. Therefore the Berg patent teaches an article 20 or training pants, see col. 11, line 11, having a liner 38, a cover 40, a posterior region, an anterior region, a crotch region, a waist opening and leg openings, see, e.g., paragraph bridging cols. 4-5, an absorbent body 42, which body has a first zone 56, a second zone(s) 58, see Figures 1-3, the first zone having a lower absorbent capacity per unit weight than the second zone, see portions cited supra. Applicants claim the absorbent body having a specific flowback according to a Flowback Test and the capability of indicating the release of liquid into the article

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to the wearer due to the facilitation of flowback. But the Berg patent teaches the claimed structure as best understood and interpreted. Therefore there is sufficient factual evidence for one to conclude that the similar structure of Berg also inherently includes the specific flowback when tested similarly and thus also would be inherently capable of indicating to the wearer the release of liquid into the article due thereto. In the alternative, it would be obvious that the structure of Berg whether the same or an obvious variation thereof when similarly tested according to the Flowback Test as disclosed would necessarily and inevitably include the claimed specific flowback and thus the capability of liquid release indication. With regard to claims 2-5, 7-9, 20-23 and 25-27, see paragraphs 7 and 8 supra and the discussion of claims 1 and 50-53, supra.

Response to Arguments

12. Applicants remarks with regard to matters of form have been considered but are either deemed moot in that the issue discussed has not been reraised or is deemed not persuasive for reasons discussed supra. Applicants remarks with respect to the prior art has been considered but are deemed not persuasive because such are narrower than the teachings of the prior art, the disclosure of the claimed invention, and the claim language. Applicants argue that Berg fails to teach or suggest the flowback characteristics recited in claims. However, see the prior art rejection supra, especially see the portions cited supra which teach embodiments which maintain liquid body waste in the central portion for a certain period of time, see, e.g., the col. 2, lines 50-53, the paragraph bridging cols. 16-17 and col. 20, lines 18-31. Furthermore, Applicants appear to suggest the difference between the prior art and the invention is due to superabsorbent size.

Yet nowhere in the instant application and/or claims is the size of the superabsorbent used limited to sizes other than those by Berg.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any new grounds of rejection were necessitated by the addition of the flowback limitation to claims 1 and 19 and new claims 50-53.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
May 10, 2004